

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 11, 2003 at 3:40 P.M., in Room 317-B & C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Ken Toole (D)

Members Excused: Sen. Don Ryan (D)
Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 561, 3/5/2003;
HB 562, 3/5/2003;
HB 304, 3/5/2003
Executive Action: HB 562; HB 561

HEARING ON HB 561

Sponsor: REP. ROD BITNEY, HD 77, KALISPELL

Proponents: Greg Jergeson, PSC

Opponents: None

Opening Statement by Sponsor:

REP. ROD BITNEY, HD 77, KALISPELL, presented HB 561 at the request of the Public Service Commission (PSC) and stated the bill dealt with fees charged by the PSC. According to statute, fees had to be commensurate with costs incurred and cannot exceed \$500; these costs include travel and accounting expenses, court reporter fees, commissions and staff time. The commission asked to change the wording from "commensurate with costs incurred" to "reasonable".

Proponents' Testimony:

Greg Jergeson, PSC, stated this bill derived from the recommendation of a legislative auditor, and it served to clarify this one issue.

Questions from Committee Members and Responses:

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, asked who paid these fees, and Mr. Jergeson replied they were paid by the applicant in each case; for instance, if someone wanted to start a motor carrier service and needed to obtain a license from the PSC, he would pay this fee when filing his application. He added the money went into the general fund rather than the commission's coffers.

Closing by Sponsor:

REP. BITNEY closed on HB 561.

HEARING ON HB 562

Sponsor: REP. NORMAN BALLANTYNE, HD 86, VALIER

Proponents: Greg Jergeson, PSC

Opponents: None

Opening Statement by Sponsor:

REP. NORMAN BALLANTYNE, HD 86, VALIER, submitted a written opening statement, **EXHIBIT**(ens51a01).

Proponents' Testimony:

Greg Jergeson, PSC, acknowledged the sponsor introduced HB 562 at the commission's request and asked for the committee's support. He briefly explained the second part of the bill, saying the phone company was required to notify its customers of an impending transfer or sale in accordance with PSC rules, and the customer then had the choice of transferring to the acquiring carrier or a different one altogether; the acquiring carrier did not have to obtain those customers' signature opting to stay with them.

Questions from Committee Members and Responses:

There were no questions from the committee.

Closing by Sponsor:

REP. BALLANTYNE closed by saying this bill brought Montana into the electronic age and into conformity with federal regulations.

HEARING ON HB 304

Sponsor: REP. ALAN OLSON, HD 8, ROUNDUP

Proponents: Jim Mockler, Montana Coal Council
 Bob Pavlovich, IBEW-233
 Steve Wade, Great Northern Properties
 Willie Duffield, MAOGC Counties

Opponents: Patrick Judge, MEIC
 Michele Reinhart, Northern Plains Resource Council

Opening Statement by Sponsor:

REP. ALAN OLSON, HD 8, ROUNDUP, presented HB 304, stating this bill was based on a 2001 law, originally introduced by Sen. Ken Miller, and provided for a reduction in the coal severance tax on coal burnt in power plants offering 50% of its output for sale in Montana; HB 304 basically extended the deadline from 2008 to 2012. He added a technical amendment for page 2, line 1, was being drafted which would change "to be set by the Public Service Commission" to "to be approved by the Public Service Commission" with regard to the power rate.

Proponents' Testimony:

Jim Mockler, Montana Coal Council, rose in support of HB 304, stating he had discussed this with the sponsor and now asked the committee to clarify, via an amendment, that once the PSC had

approved the sale of electricity to the default supplier, this would constitute tacit approval of the price and therefore, the supplier would qualify for the incentive. He added this was a necessary tool because currently, the PSC did not have a procedure for this in statute.

Bob Pavlovich, IBEW-233, stated passage of HB 304 would generate more power for Montana at a lower rate as well as provide more than 300 jobs at the plant on the East Ridge.

Steve Wade, Great Northern Properties, asked for the committee's support of HB 304 for the reasons stated in previous testimony.

Willie Duffield, MAOCG Counties, also rose in support of HB 304.

Opponents' Testimony:

Patrick Judge, MEIC, voiced his opposition to the measure because he felt this was not the time to create or extend tax breaks to large corporations. He quoted from the page 2 of the Fiscal Note which stated if a plant such as the Roundup project was to be constructed in the years 2008 to 2012, the state would be losing \$1.56 million per year in uncollected coal severance tax revenue. He recalled this tax was originally set at 30% and, after a long slide, is currently at 15%, and this bill set it at 5%. He also disagreed with the hypothesis that this bill would make the difference in whether or not these plants would go forward; he saw the economics associated with the market for this power and its financing as the deciding factors. He was aware of the increased tax revenues being touted as major benefits of such a project but felt this would be greatly diminished by extending tax breaks to accomplish this. He commended the sponsor for backing off the bill as originally introduced, saying this would have gone against an agreement reached during the last legislative session which provided that in order to get this tax break, at least half of the output had to be sold to Montana consumers at cost-based rates. Lastly, he contended **Mr.**

Mockler's proposed amendment was not merely a technical amendment but went against the above mentioned agreement by making the electricity rates market based, rather than leaving them cost based, and this would deprive consumers of the full benefit.

Michele Reinhart, Northern Plains Resource Council, stated her organization was one of the original proponents of the coal severance tax, believing Montana's citizens should benefit from the development of its coal resources. She bemoaned the fact the tax rate had been cut over the years, and stated this bill created an unfair playing field because of the further cut to 5% for new projects. In closing, she also voiced objection to the

inherent reduction in coal severance tax receipts which are allocated to a state special revenue account to pay for local impact mitigation.

Questions from Committee Members and Responses:

SEN. BOB STORY, SD 12, PARK CITY, asked the sponsor to explain the meaning of "from the coal contracted for" in Section 1(b)(ii). **REP. OLSON** advised it meant they would only get the reduction in the coal severance tax for the amount of coal contracted to a particular plant. **SEN. STORY** wondered whether he assumed the plant would run on something other than coal, and **REP. OLSON** replied this would only apply to coal-fired power plants, and only to the portion of coal contracted for use in the power plant and for sale in Montana. **SEN. EMILY STONINGTON, SD 15, BOZEMAN**, surmised the severance tax was assessed for the coal which is mined; that coal was sold to a generation facility, and she understood the bill to say the reduction in the coal severance tax was given to the electrical generation facility and not the coal mine. **REP. OLSON** corrected her and stated the tax break goes to the coal producer for the portion of the coal contracted to the power plant; half of the power generated from this coal has to be made available for sale in Montana. To illustrate the mechanism, he used the following example: a coal mine produces 10 million tons of coal per year, 2 of which are contracted to a power plant; the coal severance tax break is based on the 2 million tons, and the remaining 8 are taxed at the regular rate. **SEN. STONINGTON** did not understand why the generator was to provide the electricity at cost when the coal producer got the break. **REP. OLSON** replied the cost would most likely be passed on to the generation facility because the amount of the tax was added to the cost of coal. **Mr. Mockler** explained the utility purchased coal from the mine at a price which included the taxes paid; so ultimately, the purchaser benefits as well because the incentive is reflected in the purchase price. **SEN. STONINGTON** correctly assumed the tax break would be reflected as well in the price paid by the consumer and wondered if the bill required the coal producer to pass the tax reduction on to the generator. **Mr. Mockler** advised it did not but assured her it would be passed on. **SEN. STONINGTON** asked where the incentive would be for the generator to buy coal that is assessed a reduced tax when there is no guarantee they will benefit. **Mr. Mockler** stated with the RFP, the purchaser will know what the price of the coal will be, delivered to where he needs it, and it will include a clause with the amount of the contract.

{Tape: 1; Side: B}

Note: **SEN. WALT McNUTT, SD 50, SIDNEY**, joined the committee at 4:10 p.m.

SEN. TOOLE, SD 27, HELENA, asked the sponsor to clarify the beneficiary of the tax break again, and **REP. OLSON** felt **Mr. Mockler** had done an excellent job of explaining this but repeated the coal tax is considered in the price of the coal to the contractor. **SEN. TOOLE** wondered if the mine and the generator for the project the sponsor had in mind was owned by one company. **REP. OLSON** replied in the case of the Roundup operation, there were two separate operators whereas at Otter Creek, it could be one and the same. **SEN. TOOLE** inquired if the tax benefit was passed on to the consumer, how would this provide any incentive to either the coal producer or the generator under the cost-based rate setting process. **REP. OLSON** advised the PSC would look at whether this could lower the cost of the fuel, thereby lowering the cost of generation, and they would take this into account as they approved rates. **SEN. TOOLE** asked whether he envisioned this as being entirely passed through which **REP. OLSON** confirmed. **SEN. TOOLE** assumed this meant that a deregulated activity was brought back under PSC jurisdiction, namely the approval of cost based rates plus a reasonable rate of return. **REP. OLSON** agreed, insofar as someone took advantage of the tax reduction. **SEN. TOOLE** stated there had been discussions as to costs set versus costs approved by the PSC and asked if the sponsor envisioned power out of these facilities could be approved at a lower rate than the one charged by the default supplier. **REP. OLSON** deferred to Steve Vick, PSC staff, who explained they really did not have a good handle on what it meant to "set rates" versus "to approve rates". **CHAIRMAN JOHNSON** asked **Mr. David Hoffman, PPL**, to enlighten the committee, and **SEN. TOOLE** rephrased his question, asking if this bill were passed, and the PSC was looking at the production costs of someone who had taken this tax reduction, could they set the electricity rate at one below the default supplier's. **Mr. Hoffman** stated he did not have an answer either. **CHAIRMAN JOHNSON** asked the sponsor why he wanted to extend the deadline to 2012. **REP. OLSON** advised it was to include coal mining projects such Circle West, Otter Creek, and Hardin which were in the planning stages; he took into consideration how long it would take to permit a mine and a power plant and handle possible legal challenges. **CHAIRMAN JOHNSON** wondered if the permits for both the mine and the power plant at Roundup were already in effect, and **REP. OLSON** stated the permit for the Roundup mine was transferred about 18 months ago; the DEQ has issued an air quality permit for the Roundup power plant which is currently being challenged by three environmental groups. **CHAIRMAN JOHNSON** ascertained the project was permitted but held up by a court challenge. **REP. OLSON** explained the challenge was to the Board of Environmental Review and, judging

from past experience, it could easily end up in court. **CHAIRMAN JOHNSON** wondered if he thought this might get settled between now and 2008. **REP. OLSON** believed the Roundup situation would not be settled; he believed the Hardin plant had been permitted as well. **SEN. STONINGTON** repeated she could not tell from the wording of the bill which coal would qualify for the tax break. **REP. OLSON** advised it was the coal contracted for by the power plant. **SEN. STONINGTON** reiterated the tax break applied to all coal contracted to the power plant regardless of whether the power generated from it was sold in Montana, and **REP. OLSON** confirmed this. **SEN. GARY PERRY, SD 16, MANHATTAN**, professed confusion about the original law, as per page 1, line 30, and asked how the amount was quantified. **REP. OLSON** explained if the plant produced 600 megawatts, it would mean 300 megawatts. **SEN. PERRY** stated he understood this; he questioned the language "the first one-half of the amount of power..." and asked whether this applied to the power produced each day, or during a year. **REP. OLSON** stated he understood it to mean if the first half of the power was offered for sale in Montana, the coal would be eligible for the tax break. **SEN. PERRY** suggested the wording "first one-half" should be clarified because it could be interpreted in different ways. **SEN. TOOLE** surmised if a Montana mine sold coal to a power plant who in turn sold all their electricity out of state, there would not be a tax incentive, and **REP. OLSON** affirmed this. **SEN. BOB STORY, SD 12, PARK CITY**, wondered if all of the power could be sold out of state if it was offered in Montana and no one bought it. **REP. OLSON** clarified his earlier answer and said if it was offered for sale in Montana at a rate approved by the PSC, and it was not accepted, then it could be sold out of state. **SEN. STORY** asked if coal was imported from Wyoming, for instance, would Montana collect a tax on it. **Mr. Mockler** replied unfortunately, there was no tax on imported coal. **SEN. STORY** wondered if there was an interstate commerce clause which prevented the state from levying a tax on imported coal. **Mr. Mockler** advised there was such a law. **CHAIRMAN JOHNSON** referred to **SEN. STONINGTON's** line of questioning and inquired, if it took a million tons of coal to generate 300 megawatts of power, would that be the only part of the coal eligible for the tax break. **REP. OLSON** said the only coal which gets the break is the coal going to the power plant; anything in excess of that will be taxed at the regular rate. **CHAIRMAN JOHNSON** assumed, if the tax credit was the result of the coal being sold in Montana, then the tax break would only apply to the one million tons if 300 megawatts were sold in Montana. **REP. OLSON** stated this would apply if it was a 300 megawatt plant; the example had dealt with a 600 megawatt plant. **CHAIRMAN JOHNSON** wanted to make sure the coal producer would still be entitled to the tax break, even if the other 300 megawatts were sold out of state, but not on the

coal that was sold elsewhere, which **REP. OLSON** confirmed. **SEN. BEA MCCARTHY, SD 29, ANACONDA**, suggested changing the language on page 1, line 30 to just say "one half of the power".

Closing by Sponsor:

REP. OLSON closed on HB 304, repeating it was an extension of legislation passed during the previous session; he added he did not sign the Fiscal Note because the information on the second page was totally incorrect. He also pointed out that the \$1.56 million lost to the state through the coal severance tax reduction mandated in this bill would be more than made up for through the new power plants' property taxes and the income taxes of their employees. He stated the bill had come up during the energy crunch of 2001 and it was not necessarily over yet; he saw it worsening over the course of the next three to four years, and declared Montana would need some of this lower cost power for sale for its consumers. Lastly, he remarked **SEN. KEITH BALES** would carry this bill for him in the Senate if it passed out of committee.

EXECUTIVE ACTION ON HB 562

Motion: **SEN. TOOLE** moved that HB 562 BE CONCURRED IN.

Discussion:

SEN. TOOLE reminded the committee HB 562 was about allowing telecommunications carriers to accept electronic signatures as customer authorization. **SEN. STORY**, who had missed part of the hearing, related he was not notified by Touch America when they sold part of their long distance business to another carrier and surmised this bill addressed that issue. When **SEN. TOOLE** mentioned the same thing had happened to **Mr. Jergeson** with the same phone company, **CHAIRMAN JOHNSON** invited **Mr. Vick** to comment on it since the commissioner had left. **Mr. Vick** understood Touch America had notified its customers, providing them the opportunity to choose an alternative carrier, and if the customer did not, they switched him automatically. He added he had no way of knowing whether they did notify their customers, they had told the PSC they would. **SEN. McNUTT** commented he did get the notice from the carrier.

Vote: Motion carried unanimously. **SEN. TOOLE** agreed to carry HB 562 in the Senate.

EXECUTIVE ACTION ON HB 561**{Tape: 2; Side: A}**

CHAIRMAN JOHNSON stated HB 561 raises applicants' fees for work done by the PSC. At the chairman's request, **Mr. Vick** added their fees had been less than costs incurred for transportation applications, and a legislative auditor had suggested to either raise the minimum fee or change the law; the commission did not want to raise the fees so as not to discourage people from applying and opted to change the law instead.

Motion: **SEN. JOHNSON** moved that HB 561 BE CONCURRED IN.

Discussion:

SEN. STORY was concerned with who would be subsidizing the fees if they were not commensurate with actual costs incurred; secondly, he asked what amount would be deemed "reasonable". **Mr. Vick** explained all of the fees go into the General Fund but all of the costs are borne by the utilities regulated by the commission, and this meant the fees would be subsidized by NorthWestern Energy, MDU, Qwest, and Burlington Northern Railroad. **SEN. STORY** wondered if the money went into the General Fund and not into the commission's coffers, why would they not charge a token amount such as \$5. **Mr. Vick** stated all he knew was the auditor's recommendation and added they did charge other fees, such as fees for Xerox copies; if they were to charge fees commensurate with costs, they would be required to document these costs or else lease the Xerox machine plus account for staff time and so on, which would be much more involved. It was the legislative auditor's recommendation to change the language in current law; this would mainly affect the transportation applications because they resulted in higher costs. **SEN. COREY STAPLETON, SD 10, BILLINGS**, commented this change was not the recommendation of the legislative committee he had been a part of because it would put in statute something which could not be attained; he could not support this bill whether the limit was \$100 or \$500. **SEN. TOOLE** wanted to clarify the fees were not necessarily subsidized by the utilities but by the customers because of the passing through of costs. **CHAIRMAN JOHNSON** agreed and added the companies who had work done by the PSC ought to pay for it, not the taxpayers. **SEN. EMILY STONINGTON, SD 15, BOZEMAN**, was confused and painted the following scenario in order to clarify the purpose of the bill: the PSC charges a transportation company \$500 to do a transaction which really costs them \$700; since this money goes into the General Fund, she wondered who was paying for the work and asked if the PSC could arbitrarily raise their fees. **SEN. STAPLETON** explained the audit

found that the PSC was routinely charging \$100 which did not come close to covering actual costs and thus, came up with this change in law to mitigate the shortfall. The problem he saw with the bill was that \$500 was no better than \$100 if it was not commensurate with costs incurred. **SEN. STONINGTON** felt fees should cover costs for administrative functions and said it was better to set an amount because "reasonable" had no definition whatsoever. **SEN. TOOLE** commented he would vote for the bill because it was crafted by the very people who dealt with these things and knew what needed to be done.

Vote: Motion failed 3-7 with JOHNSON, MCNUTT, and TOOLE voting aye on a Roll Call Vote.

Motion/Vote: SEN. STORY moved that HB 561 BE INDEFINITELY POSTPONED. Motion carried 7-3 with JOHNSON, MCNUTT, and TOOLE voting no.

ADJOURNMENT

Adjournment: 4:40 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens51aad)